Supreme Court, U.S.
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No. 03-1621

In The
Supreme Court of the United States

DARYL KEITH HOLTON,

Petitioner,

v.

STATE OF TENNESSEE,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Tennessee

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Fifth and Fourteenth Amendments require state prosecutors to charge by indictment aggravating circumstances upon which a death sentence is sought in a state-court prosecution for capital murder.

2. Whether a criminal defendant's choice to forgo the presentation of mitigation evidence violates the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment.

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OPINIONS BELOW

The opinion of the Tennessee Supreme Court is reported at 126 S.W.3d 845 (Tenn. 2004). It is attached to the petition as Appendix ("App.") A at A-1. The opinion of the Tennessee Court of Criminal Appeals was filed on July 17, 2002. It is attached to the petition as App. B at A-46.

STATEMENT OF JURISDICTION

Petitioner invokes the jurisdiction of this Court under 28 U.S.C. §1257.

STATEMENT OF THE CASE

On April 20, 1998, petitioner was indicted by the Bedford County, Tennessee, Grand Jury for four counts of first degree murder for the premeditated murder of his children, ages 12, 10, 6 and 4. App. E at A-124-127. That same day the State served its notice of intent to seek the death penalty. That notice asserted the following aggravating circumstances applicable to each count: the murder was committed against persons less than twelve (12) years of age and the defendant was eighteen (18) years of age, or older; the defendant knowingly created a great risk of death to two (2) or more persons, other than the victim; the murder was especially heinous, atrocious, or cruel in that it involved torture or serious physical abuse; the defendant committed a "mass murder"; the defendant knowingly mutilated the body of the victim after death; and the victim was particularly vulnerable due to a significant handicap or significant disability, . . . and at the time of the murder the defendant knew or reasonably

should have known of such handicap or disability. App. F at A-129-31. On May 7, 1999, the State filed a supplemental notice of intent, which relied upon all of the same aggravating circumstances but specified that the circumstance regarding a handicap or disability related only to count three, the murder of 6-year-old Eric Holton. App. G at A-133-135. Ultimately, the State relied solely upon the mass murder aggravating circumstance for all four of the murders, and the age of the victims and age of the defendant for the three murders involving the 10-, 6- and 4-year-old. The jury convicted the petitioner of four counts of first degree murder. At the sentencing hearing the jury found that the State had proven both aggravating factors – mass murder and age – as to the three youngest children, and they found the single aggravating factor of mass murder in the case of the oldest child. The jury sentenced petitioner to death on all four counts. App. A at A-1. The convictions and sentences were affirmed on direct review. *State v. Holton*, 126 S.W.3d 845 (Tenn. 2004), App. A at A-1.

ARGUMENT

I. THE FIFTH AND FOURTEENTH AMENDMENTS DO NOT REQUIRE STATE PROSECUTORS TO CHARGE BY INDICTMENT THE AGGRAVATING CIRCUMSTANCES UPON WHICH A DEATH SENTENCE IS SOUGHT IN A CAPITAL MURDER CASE.

Petitioner asks this Court to review the Tennessee Supreme Court's decision rejecting his argument that the Fifth and Fourteenth Amendments to the United States Constitution require that statutory aggravating circumstances, upon which the State relies in seeking the death

penalty, must be charged by indictment. Respondent submits, however, that review by this Court is unwarranted because Tennessee's capital sentencing scheme fully comports with this Court's decision in *Ring v. Arizona*, 536 U.S. 227 (2002). Moreover, petitioner has presented no compelling justification for a departure from the long-established rule in *Hurtado v. California*, 110 U.S. 516 (1884), that the federal right to presentment or indictment by a Grand Jury does not extend to the States through the Fourteenth Amendment. *See also Apprendi v. New Jersey*, 530 U.S. 466, 477 n.3 (2000) ("The [Fourteenth Amendment] has not . . . been construed to include the Fifth Amendment right to 'presentment or indictment of a Grand Jury' ").

In *Ring*, this Court held that Arizona's enumerated aggravating factors "operate as the functional equivalent of an element of a greater offense" and must be found by a jury, rather than a judge, under the Sixth Amendment's jury trial guarantee. *Ring*, 536 U.S. at 609. Applying *Apprendi v. New Jersey*, 530 U.S. 466 (2000), the Court reasoned that, in absence of a finding of at least one statutory aggravating factor, the maximum punishment a defendant convicted of first degree murder can receive is life imprisonment. Because the effect of an aggravating circumstance is to increase the penalty beyond that authorized by the jury's verdict standing alone, that fact must be found by the jury beyond a reasonable doubt. *Ring*, 536 U.S. at 603-04. Unlike Tennessee, Arizona's capital sentencing statute permitted the trial judge, sitting alone, to determine the presence or absence of aggravating factors for imposition of the death penalty. *Ring*, 536 U.S. at 592-93 (citing Ariz. Rev. Stat. Ann. §13-703(C) (West Supp. 2001)). The Court's decision in *Ring*

thus overruled *Walton v. Arizona*, 497 U.S. 639 (1990), to the extent it allowed a sentencing judge, sitting without a jury, to find an aggravating circumstance.

Ring did not redefine first-degree murder as two distinct "offenses." Indeed, the power to define what shall constitute a state criminal offense is committed exclusively to the state legislature. *State v. Hale*, 840 S.W.2d 307, 314 (Tenn. 1992) (citing *Hall v. State*, 151 Tenn. 416, 418, 270 S.W. 84, 85 (1925)). Rather, the Court found that aggravating factors in a capital sentencing proceeding operate as the "functional equivalent" of an element of a greater offense and must, consistent with the Sixth Amendment, be determined by a jury. That requirement is plainly satisfied under Tennessee law.

As to the constitutional requirements for indictments in Tennessee, neither the United States Constitution nor the Tennessee Constitution requires that the State charge in the indictment the aggravating factors to be relied upon by the State during sentencing in a first-degree murder prosecution. *State v. Dellinger*, 79 S.W.3d 458, 467 (Tenn.), *cert. denied*, 537 U.S. 1090 (2002). This Court expressly declined to address the indictment issue in *Apprendi*, and the issue likewise was not implicated in *Ring*. In *Ring*, moreover, the Court noted that the Fourteenth Amendment "has not been construed to include the Fifth Amendment 'right to presentment or indictment of a Grand Jury.'" *Ring*, 536 U.S. at 597, n.4 (quoting *Apprendi*, 530 U.S. at 477, n.3).

For federal constitutional purposes, due process requires only that a defendant be "informed of the nature and cause of the accusation" against him. U.S. Const. amend. VI. The requirement for indictment in Tennessee

derives solely from Article I, §14, of the Tennessee Constitution, which provides "[t]hat no person shall be put to answer any criminal charge but by presentment, indictment or impeachment." It is a matter for the state legislature to determine what shall constitute the accusation and in what form the crime shall be charged. *Tipton v. State*, 160 Tenn. 664, 28 S.W.2d 635 (1930); *State v. Stephens*, 127 Tenn. 282, 154 S.W. 1149 (1913).

As this Court has previously recognized, the fact that the Federal Constitution's framers saw fit to provide a specific procedural guarantee against arbitrary accusations indicates the importance attached to the liberty interest at stake. It does not, however, guarantee any particular procedure in the various state courts. *Hurtado v. California*, 110 U.S. 516, 535 (1884). The Tennessee Supreme Court has recognized that the requirements of the Sixth and Fourteenth Amendments to the Federal Constitution and Article I, §9, of the Tennessee Constitution guarantee that an accused be informed of the nature and cause of the accusation against him.[1] Those constitutional provisions are met if the indictment: (1) provides notice to the accused of the offense charged; (2) provides the court with an adequate ground upon which a proper judgment may be entered; and (3) provides the defendant with protection against double jeopardy. *Wyatt v. State*, 24 S.W.3d 319, 324 (Tenn. 2000). *See also Ruff v. State*, 978 S.W.2d 95, 99-100 (Tenn. 1998) (rejecting challenge to indictment that failed to charge culpable mental state,

[1] Article I, §9, of the Tennessee Constitution provides, in pertinent part: "That in all criminal prosecutions, the accused hath the right . . . to demand the nature and cause of the accusation against him. . . ."

noting that, "[b]y this ruling, we wish to make clear that the Court has relaxed the strict pleading requirements of common law"); *State v. Hill*, 954 S.W.2d 725 (Tenn. 1997) (indictment need not conform to strict pleading requirements).

Petitioner was indicted in April of 1998 for the first degree murders of his four children, Stephen, Brent, Eric and Kayla, crimes which, by statute, carried only three possible penalties – life imprisonment, life imprisonment without the possibility of parole, or death. *See* Tenn. Code Ann. §39-13-204 (1997). Petitioner's indictments, therefore, placed him on notice of both the nature of the charge (first degree murder) and the potential penalties (death, life imprisonment or life imprisonment without parole). Tennessee's statute setting forth the aggravating circumstances the jury may consider in a first degree murder prosecution, Tenn. Code Ann. §39-13-204(i), as well as the state-law requirement that the prosecutor notify capital defendants no less than thirty days before trial of the intent to seek the death penalty and specify the aggravating circumstances upon which the State intends to rely, Tenn. R. Crim. P. 12.3, provided petitioner sufficient notice to satisfy the constitutional requirements of due process. *Dellinger*, 79 S.W.2d at 467 (Tenn. R. Crim. P. 12.3(b) "satisfies the requirements of due process and notice"). Further, in accordance with Tennessee law[2] and consistent with the constitutional mandate set forth in *Ring*, petitioner's *jury* found two aggravating circumstances in this case beyond a reasonable doubt.

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[2] *See* footnote 1, *supra* p. 4.

II. NEITHER THE EIGHTH AMENDMENT NOR THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT ARE VIOLATED WHEN A CRIMINAL DEFENDANT CHOOSES TO FORGO THE PRESENTATION OF MITIGATING EVIDENCE AND SO INSTRUCTS HIS COUNSEL.

Petitioner claims that the State of Tennessee has violated his Eighth and Fourteenth Amendment right to present, and have the jury consider, mitigating evidence during the sentencing phase of his trial by acceding to his demand that no mitigating evidence be presented beyond the testimony of a jailor who testified regarding petitioner's behavior during pretrial confinement. Because this claim was not presented in this manner in the state courts, this Court should decline review. *State Farm Mutual Automobile Insurance Co. v. Duel*, 324 U.S. 154, 160 (1945) (Supreme Court will not review claims that were not presented or passed upon by state court).

In any event, the sole authority upon which petitioner relies are cases in which, by statute or instruction, jurors were prevented from considering mitigation evidence sought to be introduced. In this case, the trial court followed the procedures set forth by the Tennessee Supreme Court in *Zagorski v. State*, 983 S.W.2d 654, 660-661 (Tenn. 1998), to ensure that petitioner's decision was intelligent and voluntary. App. B at A-95.

Petitioner acknowledges that this Court has never held that a criminal defendant may not choose to forgo the presentation of mitigating evidence. Pet. at 16. While it is true that a few states have held that an individual's right to determine the course of his representation may be subjugated to the public interest in the integrity of the judicial system, *People v. Deere*, 710 P.2d 925 (Cal. 1985); *Commonwealth v.*

McKenna, 383 A.2d 174 (Pa. 1978), this Court has never ruled so broadly. Moreover, this is not a case where no mitigating evidence was presented. As the Tennessee Supreme Court found, the defense presented mental health evidence related to petitioner's mental state at the time of the murders and during the period leading up to them. App. A at A11-13. While this evidence was offered as evidence of a possible insanity defense during the guilt phase, there was nothing that prevented the jury from further considering the evidence in mitigation during sentencing. Where, as here, a criminal defendant makes an informed decision to limit the type and quantity of mitigating evidence during the sentencing phase of his trial, such a decision does not violate the Eighth Amendment or due process.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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